**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION NO.165 OF 2006**

Smt Jaibunissa Khudbuddin Bohari ...Petitioner

Versus

Mohammed Husen Abdul Gaphar & Ors. ...Respondents

Shri D.W.Bhosale for the Petitioner.
Shri Girish Godbole for the Respondent Nos.1 to 3.
Shri A.A.Joshi for the Respondent Nos.7,8, 9 and 11.

**CORAM : ABHAY S.OKA, J.**
**DATED : MARCH 20, 2007.**

**P.C.:**

1. Heard the Advocate for the Petitioner. Perused the order dated 21st August, 2006. By the said order, after hearing the Advocates for the parties, contempt Petition has been admitted only as against the first Respondent and this Court has ordered that contempt notice be issued to the first Respondent.

2. The Petitioner is alleging that the Respondents have committed breach of order dated 01st September, 2005 passed in Civil Application No.1093 of 2005. By the said ad-interim order the Respondents in the said Application were directed to maintain status-quo with regard to the suit property.

3. The material averments in the contempt Petition

have been made in paragraph Nos.4 and 5 which read thus:

> "4. That the Petitioner states that though the status quo order has been passed by this Hon'ble Court on 01/09/2005, the respondent has demolished the suit property being city survey number 3399, 6/7/32/13/1/1A and they are constructing the multistorey building on the said suit property like shopping centre and some tenements over there and likely to create third party interest this fact going to show from the document get from the office of the Municipal Corporation Pandharpur i.e Sanction plan, work commencement certificate issued by the said authority the copies of the said documents are annexed herewith marked as Exh.-B.
>
> 5. That the Petitioner further states and submit that on 07/03/2006 she has come to know that the respondents are likely to demolish the old structure and construct the new building on the said suit property therefore Petitioner has taken a photographs of old structure of the suit building on 07/03/2006. Then the respondent has actually started

demolition work since 31/03/2006. Then the Petitioner has again taken the photographs of the said demolition work on 31/03/2006, 01/04/2006 showing the work of demolition. The copies of the said photographs respectively annexed herewith marked as Exh.-C".

4. There is a reply filed by the first Respondent. In the said reply the first Respondent has submitted that even commencement certificate for construction of building is not issued in his name. It must be noted here that on 26th April, 2006, ad-interim order dated 01st September, 2005 has been clarified by granting prayer clause (a) of Civil Application No.717 of 2006 which reads thus:

"(a) pending the hearing and final disposal of the present Second Appeal No.621 of 2005, this Hon'ble Court may be pleased to suitably clarify that the order dated 1.9.2005 passed by the learned single Judge in this Hon'ble Court in C.A.No.1093 of 2005 in Second Appeal No.521 of 2005 does not preclude the Applicant from

demolishing the old structures standing on the property bearing C.T.S. No.3399/1 to 33 and C.T.S.3399/6/7/32 of village Pandharpur from constructing a new building thereon in accordance with the commencement certificate issued by the Planning Authority viz., Pandharpur Municipal Corporation on 17.10.2005 and 26.9.2005 being Exhibit F (Colly) to this Civil Application".

5. Perusal of the contempt Petition shows that the averments made therein are very vague. There are total twelve Respondents to the contempt Petition out of which the Respondent Nos.3, 4 and 6 to 12 are shown as formal parties and the Respondent Nos.1, 2 and 5 are shown as contemnors. There is no specific allegation as to which Respondent demolished the old structure in contravention of Order dated 01st September, 2005. There is a reply filed by the fifth Respondent to this Petition. In the said reply the aforesaid modified order is placed on record.

6. The learned Advocate for the Petitioner relied upon averments made in Civil Application No.128 of 2006.

He pointed out that in the said Civil Application, the Petitioner has pointed out that it is the Respondent No.5 who has disobeyed the order of status-quo passed on 01st September, 2005. In the said Application, it is specifically alleged that it is the Respondent No.5 who engaged labourers for demolition of the structure and he started demolition from 31st March, 2006.

7. It is thus obvious that no case is made out as against the first Respondent for committing deliberate or wilful breach of order dated 01st September, 2005. The prayer in the Civil Application No.128 of 2006 is for amendment of the contempt Petition. If the Petitioner is alleging that the fifth Respondent has committed a breach of any order passed by this Court, the Petitioner will have to take out appropriate proceeding in that behalf and the said grievance cannot be agitated by amending the Contempt Petition in which notice has been issued only as against the first Respondent.

8. Hence, notice issued against the first Respondent is discharged. Contempt Petition is disposed of.

**JUDGE**